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C O N F I D E N T I A L SECTION 01 OF 02 DJIBOUTI 000595

SIPDIS

DEPT. FOR LOYE HOWELL, KINSHASA FOR DAPHNE TITUS

E.O. 12958: DECL: 04/19/2014

TAGS: [CMGT](#) [KJUS](#) [CASC](#) [CJAN](#) [PHUM](#) [PREL](#) [ECON](#) [EINV](#) [KISL](#) [DJ](#)

SUBJECT: JUSTICE REROUTED, AMCIT SENTENCED

REF: A. DJIBOUTI 110

[1](#)B. DJIBOUTI 133

Classified By: CONOFF CHASE BEAMER FOR REASON 1.4 (D)

#### SUMMARY

[1](#)1. (U) U.S. Citizen Alan Funk (PPT# 156160695) has received a six month suspended prison sentence and a 1.6 million DF (U.S.\$9,040) fine from the Djiboutian court of appeals for his role in a March 2000 traffic accident in which a Djiboutian man was killed. Funk was absolved of any wrongdoing in the same case by a criminal court in November of 2000. The overturning of the case four years later appears to involve serious and fraudulent misapplications of justice by the Djiboutian court of appeals. If the decision stands upon second appeal to the Djiboutian Supreme Court USG intervention may be required to protect the rights of this American Citizen. End Summary.

#### THE ACCIDENT AND INITIAL VERDICT

[1](#)2. (U) American Citizen Warden Alan Funk (PPT# 156160695), an employee of International Development Relief Board (IDRB), a non-governmental organization, was sentenced to six months suspended imprisonment and 1.6 million DF (U.S.\$9,040) in damages by a Djiboutian appeals court on April 17, 2004 for his role in a March, 2000 traffic accident in which a man was killed. The sentence comes nearly four years after Funk was found innocent by a criminal court of any wrongdoing in November of 2000. Funk's local attorney has appealed, to the Djiboutian Supreme Court, the appeals' court overturning and subsequent sentencing.

[1](#)3. (U) Funk reported to Conoff that in March of 2000, despite his best efforts to avoid contact, the car he was driving struck and killed a Djiboutian pedestrian on the Route D'Arta, the only paved road departing Djibouti City. Funk claims the man he struck was naked, deranged, and wandering aimlessly along the fast moving road. Funk claims he later heard that the man had been chained to a tree in his family's compound before escaping to wander onto the highway. Eyewitness testimony by a Djiboutian citizen presented to the criminal court was largely responsible for his acquittal in November of 2000.

[1](#)4. (U) Funk received notice on April 17 that the Djiboutian court of appeals had overturned the criminal court's 2000 decision. According to Funk's legal council, French citizen Alain Martinet (note: also Post's legal retainer), the aggrieved party (the deranged man's family) had two years to file an appeal to the criminal court's decision. When Funk's legal council raised this with the Appeals Court, the Appeals Court responded that the "registry had been lost" and thus it was impossible to say when the appeal had been filed. Funk believes the family is upset that they have not received any compensation for the death as they might have under traditional Somali conflict resolution practices and so now want to seek damages in civil court. Funk's acquittal in 2000 makes it nearly impossible for the family to win any damages in civil court but if this appeals court conviction stands, the family's case in civil court would be much stronger.

#### POLITICAL BACKDROP

[1](#)5. (C) This case is the second apparent misapplication of justice (see refelts) at the appeals court level in Djibouti. At the behest of Exxon-Mobil, post had encouraged the Djiboutian government to remove or otherwise sanction several corrupt appeals court judges. Post received strong but informal messages from the Minister of Justice, the Minister of Foreign Affairs, and the Minister of the Presidency that "the matter will be taken care of." To date, post has seen no positive governmental action on the matter. To the contrary, two of the most notorious judges were recently named to head the controversial "cours de contentieux." This is the branch of the appeals court which handles abuses of power and the post had been vacant for some eight years as highlighted in the Department's 2003 Human Rights Report on Djibouti.

COMMENT

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16. (C) In light of recent Embassy approaches to Djiboutian officials on the urgent need for judicial reform, this seemingly mundane traffic "manslaughter" is notable. Four years after his acquittal, in a case that resembles Exxon-Mobil's problems with forged court records and lost files, this respected American Citizen Warden who has worked in East Africa for over 20 years is convicted and sentenced by the very court at the heart of Embassy concerns. We can only speculate whether this apparent miscarriage of justice is also motivated by showing the Embassy who defines the "rule of law" in Djibouti. Regardless, we will continue working with Exxon-Mobil on their case, and wait to see if this case must be added to our grievance list. End comment.  
RAGSDALE